

November 2, 2015

Newton Tedder  
U.S. EPA Region 1  
5 Post Office Square – Suite 100  
OEP06-4  
Boston, MA 02109-3912



Re: **Comments on the Draft NPDES General Permit for Stormwater Discharges from Small MS4s in New Hampshire**  
**Fall 2015 Public Notice of New & Revised Language for Sections 2.1.1, 2.2 (including all subsections), and 2.3.6 and Appendices F and H**

Dear Mr. Tedder:

Tighe & Bond appreciates that EPA has given additional consideration to proposed requirements for the New Hampshire NPDES Small MS4 General Permit and has released revised language for another round of public comments. We have prepared the following comments and questions in response to the new and revised language referenced above. Our comments are referenced by page (from the copy of the draft permit sections and appendices provided on EPA's website) and by the permit section number. We have focused our comments on sections where we believe there is a substantial need for improvement to allow appropriate flexibility and cost effective implementation of the Clean Water Act and NPDES program goals specific to New Hampshire.

***Part 2.1.1: Requirements to Meet Water Quality Standards***

- **(Page 2, Part 2.1.1.b & c):** Please clarify the statement "or its tributaries in some cases." Does EPA intend to say that if a discharge from a MS4 to a tributary of a downstream waterbody that is impaired and subject to an approved TMDL or is considered water quality limited, that the MS4 is subject to the same requirements as if the MS4 were discharging directly to the impaired or water quality limited waterbody, even if the tributary is not referenced in the most recent approved New Hampshire 303(d) List or 305(b) Report?

***Part 2.2 Discharges to Certain Impaired Waters***

- **(Pages 3-10, Part 2.2):** Upon scenario testing for a number of permittees, we have identified some inconsistencies in the applicability of pollutant-specific requirements to municipalities for TMDLs (Part 2.2.1) and Water Quality Limited Waters (Part 2.2.2) that EPA should correct or clarify. In several cases, it was unclear to us why some municipalities were listed in the Permit for certain impairments while the receiving waters within the Regulated Area were not listed as impaired for the pollutant of concern.
  - It appears that EPA has applied TMDL and Water Quality Limited Waters requirements to receiving waters that are *outside of the Regulated Area* by including those municipalities in the watershed-specific list. We request that prior to issuing the final permit, EPA revise the lists provided in the permit (both this section and Appendices F & H) as appropriate to correct this.
  - The first paragraph in Section 2.2.2 contains a definition of "Water Quality Limited water body" that is based on an extremely broad list of overlapping water quality standards that have potential of conflicting and causing great confusion. What documents govern interpretation of TMDLs and Water Quality Limited Waters

applicability; the individual TMDL reports, the 303 (d) List, the 305(b) Report, or the tables provided in Part 2.2? Please state the source in the final permit.

- **(Pages 3-8, Part 2.2.1, Part 2.2.2, and Appendix F and H):** Through the Pollution Tracking and Accounting Pilot Project (PTAPP) being coordinated by NHDES, communities in the Great Bay watershed are already taking steps to track reductions in nitrogen from non-point sources and identify both structural and non-structural BMPs that are appropriate to reduce nitrogen. We recommend EPA consider this ongoing effort and associated timelines for implementation in the MS4 permit requirements related to nitrogen TMDLs and impairments.

***Part 2.3.6 Stormwater Management in New Development and Redevelopment (Post Construction Stormwater Management***

- **(Pages 9, Part 2.3.6.a.ii.(d)):** Tighe & Bond is concerned that the revised language relative to post-construction stormwater management standards will result in discouraging redevelopment project from moving forward, and in particular the reference to section Env-Wq 1507.03 of the New Hampshire Alteration of Terrain Administrative Rules. Env-Wq 1507.03 does not differentiate between new development and redevelopment and requires treatment of the full Water Quality Volume and Water Quality Flow which are both based on 1-inch of rainfall. This may be a significant challenge for many currently developed sites for a variety of reasons related to economic development and logistical site issues. Many communities in New Hampshire have recently adopted or are in the process of adopting updated stormwater management ordinances and regulations that recognize the importance of encouraging redevelopment projects over new development in order to reduce existing water quality impacts. To incentivize redevelopment projects these new local regulations provide higher degree of flexibility for redevelopment projects as compared to new development thereby creating an incentive for a developer would choose redevelopment of an existing grandfathered site over an undeveloped green field site. These flexibilities are not allowed with the proposed Permit language, and the result will be a disincentive for the redevelopment of sites that are currently contributing to quality impairments and push projects toward green field sites.

We thank you for the opportunity to comment on the draft New Hampshire Small MS4 General Permit Sections 2.1.1, 2.2 (including all subsections), 2.3.6, Appendix F, and Appendix H. Please contact me with any questions at 603-433-8818 or [dcedarholm@tighebond.com](mailto:dcedarholm@tighebond.com).

Respectfully,

**TIGHE & BOND, INC.**



David Cedarholm, P.E.  
Senior Project Manager

Copy: Gregg M. Mikolaities, Tighe & Bond  
Emily Scerbo, Tighe & Bond  
Jennie Moonan, Tighe & Bond